national partnership for women & families
Because actions speak louder than words.

May 8, 2019

The Honorable Richard Neal
Chair
Ways and Means Committee
United States House of Representatives

The Honorable Kevin Brady
Ranking Member
Ways and Means Committee
United States House of Representatives

Dear Chairman Neal and Ranking Member Brady,

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy organization based in Washington, D.C. Our mission is to improve the lives of women and families by achieving equality for all women. We promote fairness in the workplace, reproductive health and rights, access to quality, affordable health care, and policies that help women and men meet the dual demands of their jobs and families. We work toward creating a society that is free, fair and just, where nobody has to experience discrimination, all workplaces are family friendly, and every family has access to quality, affordable health care and real economic security.

It is past time for this country to invest in working families by passing an inclusive national paid family and medical leave program. At the National Partnership, we have been working on this issue for decades. Since our founding in 1971 as the Women's Legal Defense Fund, the National Partnership has fought for every major federal policy advance that has helped women and families, including our leadership in passing the nation's unpaid leave law, the Family and Medical Leave Act (FMLA) of 1993. Today, we convene the National Work and Family Coalition, which includes hundreds of organizations nationwide fighting for a national paid family and medical leave plan and other policies to create a more family friendly and equitable economy and country.

A key part of our work to advance paid leave has involved developing policy solutions, and we have been honored to work with advocates and legislators in six states plus the District of Columbia that have adopted paid family and medical leave laws that now cover approximately 33 million people.[1] Evidence from the state paid family and medical leave programs proves that a national program can cover every working person in the United States and be funded in a responsible, affordable way.

Today in the United States more than 100 million workers – 83 percent of the workforce – do not have paid family leave through their jobs that they can use when a new child or seriously ill or injured family member needs care.[2] Tens of millions of working people also do not have paid medical leave to address their own serious health issues.[3] When workers do not have paid leave, families, businesses and the economy suffer. The United States needs a national paid family and medical leave plan. But not all plans would ensure that all working people have access to the paid leave they need, and not all plans are affordable for employers.

1. The True Cost of Paid Leave

It is important that when we talk about the costs of paid leave that we also talk about the cost of failing to act. Economists point out that the United States is missing out on substantial economic activity – estimated at $500 billion dollars by the U.S. Department of Labor – because women, in particular, are

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held back from participating in the workforce in equal shares as their peers in other high-wealth countries.[4] Families lose an estimated $20.6 billion in wages each year due to inadequate or no paid leave.[5] Employers bear high costs of turnover, ranging between 16 percent and more than 200 percent of a worker's annual wages, when people leave their jobs[6] – which employees are about four times more likely to do when they do not have paid leave.[7] And the human and fiscal costs of America's paid leave crisis – measured in child and maternal health effects, nursing home utilization, long-term health costs and more – are vast. This is why child development experts,[8] business and management experts,[9] and medical providers and experts in social work and gerontology[10] have joined advocacy and small business organizations[11] to support a comprehensive, national paid family and medical leave program.

Policymakers seeking to develop good federal paid family and medical leave policy should develop realistic, evidence-based estimates of the likely costs and benefits of a federal program based on utilization of already-existing state paid leave programs and use of the FMLA, and should not be distracted by highly inflated cost estimates based on flimsy data. Recently, the American Action Forum (AAF) released an inflated cost estimate of the Family and Medical Insurance Leave (FAMILY) Act.[12] This cost estimate is problematic in two major ways: first, it bases its estimates on an opinion survey rather than on FMLA and state program data, and second, it uses unexplained and likely unrealistic estimates of income and benefits payments.

First, the AAF study estimates program use based on a Cato Institute opinion survey, and does not take into account data from federal or state experience with paid and unpaid leave. For example, the report estimates that, based on the opinion survey, 16.5 million people would take leave each year to bond with a new child. However, the reality is that total is more than twice the possible number of instances of parental leave that could occur annually. In 2017, 3.86 million births and approximately 130,000 adoptions occurred, suggesting that approximately 8 million parents would be eligible for parental leave in a given year,[13] and likely somewhat fewer after accounting for the number of single parents and parents who are not in the workforce.

Cost modeling should not be based on opinion polls, and the author of the report acknowledges that the wording of this particular question may have affected respondents' answers both about their desire to take leave and the estimated duration of leave they would want or need. In fact, survey respondents' prior paid and unpaid leave use, according to their own self-reporting in the survey, is at rates and durations similar to measured use in FMLA and state programs. Additionally, the survey was of voters, which is not a representative sample of the workforce as these two populations differ in significant ways. Finally, the estimates of paid leave utilization and duration do not account for eligibility or certification rules that govern program access.

The second major problem with the AAF cost estimate is that it did not justify or explain its estimates of income and benefits payments, whereas a realistic model would take into account variations in leave usage based on population and income distribution. The report appears to use averages for the duration of leaves taken or desired rather than medians, which gives outliers undue weight. Wage estimates used to calculate benefit costs are unexplained and likely inaccurate, as workers' wages vary dramatically by age, occupation, race, region and gender. Creating a realistic cost estimate requires attention to detail about workers' wages and wage replacement across the workforce. Moreover, an accurate accounting would require matching workers' wages to the type of leave and estimated duration of leave.

Due to the inadequacies of the methodology used in this report, it implausibly concludes that fully funding benefit payments could require a payroll tax as high as 2.9 percent. The author of the AAF cost estimate acknowledges that if his estimates of the FAMILY Act were based on use of the FMLA and of state programs, they would be in line with other estimates that have been produced. AAF estimates that if uptake under the FAMILY Act were similar to that in existing state programs, the annual cost of the program would be around $31 billion per year, which would be fully funded by a payroll tax of 0.4 percent as the FAMILY Act contemplates. In this report, the author revises down his own previous estimate of FAMILY Act costs based on FMLA uptake by a full 20 percent ($85.9 billion to $68.4 billion).

Under the FAMILY Act, an average worker would not make a lifetime payroll contribution that exceeds their annual salary. Under realistic cost estimates of the FAMILY Act, a 0.2 percent payroll contribution for an individual earning a $50,000 annual salary would only be $4,000 over a lifetime; or for a self-employed individual paying both the employer and employee side of the payroll contribution, $8,000. That same worker would receive more than $8,000 in wage replacement for a three month leave, making the program extremely cost-effective for low- and middle-income workers.

2. Any Paid Leave Program Must Provide Universal Access

In addition to developing a paid family and medical leave program that is funded in a responsible, affordable way, policymakers should ensure that any national program covers every working person in the United States. Putting paid leave solely in the hands of employers is not working – only 17 percent of the workforce has access to paid family leave, and less than 40 percent has access to paid medical leave through a short-term disability program.[14] Any approach that requires businesses to individually fund the full up-front costs of paid leave would unfairly punish small businesses and businesses with low profit margins by requiring large upfront expenditures, and would force working people to continue to rely on the goodwill of their employers.

Some policymakers would rather incentivize businesses to provide paid leave benefits instead of creating a national universal program. The Tax Cuts and Jobs Act (TCJA) of 2017 includes a provision that would offer small tax credits to employers who voluntarily offer paid family and medical leave to certain employees. This tax credit will not meaningfully expand access to paid family and medical leave, and is not a solution to America's lack of paid family and medical leave.

Under this tax provision, employers can receive a scaled tax credit of between 12.5 and 25 percent of the wages paid to an employee on leave, which means employers could shoulder as much as 87.5 percent of the cost of an employee's paid leave. Employers can claim the credit for offering as little as two weeks of paid leave, which is much less than the 12-week leave standard established by the FMLA. Employers' policies could address as few as just one of the reasons people qualify for leave under the FMLA – parental leave, family care leave, personal medical leave, military caregiving leave or military deployment leave – rather than all reasons, which could exclude older workers, workers caring for seriously ill or injured family members or workers with serious health needs. Employers would only receive credits for wages paid to employees with compensation in the prior year that was at or below 60 percent of the compensation threshold for "highly compensated employees" under the Internal Revenue Code. In 2017, that means employers only receive a credit for the paid leave they provide to employees paid $72,000 or less. Finally, while we do not support a tax credit policy as an effective way to provide comprehensive paid leave, this tax credit expires on December 31, 2019, giving businesses uncertainty around its future and making it less likely that businesses would create new paid leave policies because of the tax credit.

Many companies want to be able to ensure their employees have access to paid leave, but this tax credit does not offer a workable solution. In order to claim the tax credit under TCJA, employers would be required to make substantial and often unpredictable out-of-pocket expenditures to provide paid family and medical leave, in exchange for a small tax credit that would not be available until year-end tax filings. This means that paid leave will remain out of reach for many smaller and low-margin companies, making it highly unlikely that tax credits will significantly change workers' access to paid family and medical leave.

In addition to the shortcomings with the design of the tax credit, research shows that employer tax credits do not lead to widespread changes in business practices and policies. In a 2017 Ernst & Young (EY) survey, fewer than 40 percent of employers, and just 35 percent of companies with fewer than 100 employees, said tax credits would influence their decision about whether to offer paid leave.[15] In a survey conducted by Main Street Alliance, 79 percent of small business owners responded that a social insurance program would help them offer paid leave to their employees, while only eight percent said a tax credit would be the most helpful.[16] The research suggests that tax credits will not offer working families or the nation's economy real, positive change.

Alternatively, under the FAMILY Act, employers would make small, predictable contributions to a fund to ensure their employees have access to paid family and medical leave. Employees would also contribute a small, predictable portion of their pay to the fund. This model works well in a growing number of states. See Table 1 for a breakdown of the cost to employers of providing leave under each policy.

TABLE 1. COST TO EMPLOYERS OF PROVIDING EMPLOYEES 12 WEEKS OF LEAVE AT 66 PERCENT PAY				
Employee's Annual Pay		**Out-of-Pocket Cost to Employer**	**End-of-Year Tax Credit to Employer**	**Net Annual Cost to Employer (Per Employee)**
$24,000	**TCJA**	**$3,655**	**$603**	**$3,052**
	*FAMILY Act**	*$11*		*$48*
$36,000	**TCJA**	**$5,483**	**$905**	**$4,578**
	*FAMILY Act**	*$17*		*$72*
$48,000	**TCJA**	**$7,311**	**$1,206**	**$6,104**
	*FAMILY Act**	*$22*		*$96*
$60,000	**TCJA**	**$9,138**	**$1,508**	**$7,631**
	*FAMILY Act**	*$28*		*$120*
$72,000	**TCJA**	**$10,966**	**$1,809**	**$9,157**
	*FAMILY Act**	*$33*		*$144*
$84,000	**TCJA**	**$12,794**	**None****	**$12,794**
	*FAMILY Act**	*$39*		*$168*

* Amounts shown here indicate the typical quarterly and annual contributions an employer would make to cover an employee under the FAMILY Act. The employer would not pay an employee during the period of leave (the fund would provide the wage replacement). However, employers can choose to "top up" employees' FAMILY Act benefits.

** The TCJA only offers tax credits to employers who provide paid leave to employees paid $72,000 or less per year.

3. Conclusion

At a time when just 17 percent of workers in the United States have access to paid family leave at their jobs and fewer than 40 percent have personal medical leave through employer-provided short-term disability insurance, the country needs to invest in working people, families, businesses and the economy by creating a real national paid family and medical leave standard – one that is inclusive and affordable for all working people and businesses of all sizes.

Evidence from the usage of the FMLA and state paid family and medical leave programs shows us that we can create a national program that covers every working person for a reasonable cost, at a sufficient wage replacement rate and duration of leave for all FMLA purposes.

[1] National Partnership for Women & Families. (2019, March). *Map: Paid Leave and Paid Sick Days Laws Are Helping More Than 45 Million People Better Care and Provide for Their Families*. Retrieved 21 May 2019, from http://www.nationalpartnership.org/our-work/workplace/how-many-million-americans-benefit.html

[2] U.S. Bureau of Labor Statistics. (2018, September). *National Compensation Survey: Employee Benefits in the United States, March 2018* (Table 32). Retrieved 21 May 2019, from https://www.bls.gov/ncs/ebs/benefits/2018/employee-benefits-in-the-united-states-march-2018.pdf (Unpublished calculation)

[3] Ibid, Table 16. (Thirty-nine percent of workers do not have access to short-term disability through their employers)

[4] U.S. Department of Labor. (2015, September). *The Cost of Doing Nothing: The Price We All Pay Without Paid Leave Policies to Support America's 21st Century Working Families*. Retrieved 21 May 2019, from https://www.dol.gov/wb/resources/cost-of-doing-nothing.pdf; see also American Enterprise Institute & Brookings Institution. (2017, May). *Paid*

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[11] *FAMILY Act Coalition Letter to Congress*. (2019, May 2). Retrieved 21 May 2019, from http://www.nationalpartnership.org/research-library/work-family/coalition/family-act-coalition-letter.pdf; National Partnership for Women & Families. (2017, February). *Organizations Endorsing the Family And Medical Insurance Leave (FAMILY) Act*. Retrieved 21 May 2019, from http://www.nationalpartnership.org/research-library/work-family/coalition/family-act-reintroduction-coalition-quote-sheet.pdf

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[14] See note 2, Tables 16 and 32.

[15] Ernst & Young. (2017, March). Viewpoints on paid family and medical leave: Findings from a survey of US employers and employees. Retrieved 18 September 2017, from http://www.ey.com/Publication/vwLUAssets/EY-viewpoints-on-paid-family-and-medical-leave/$FILE/EY-viewpoints-on-paid-family-and-medical-leave.pdf

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